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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK AUTOMOTIVE
AG, a Swiss corporation,

Plaintiffs,

vs.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

RYMARK, INC., a Utah corporation; and
NICHOLAS THAYNE MARKOSIAN, an
individual,

Counter Claimants,

vs.

CAP ANA SWISS ADVISORS AG, a Swiss
corporation, and Amerimark Automotive AG,
a Swiss Corporation,

Counter Defendants.

**DECLARATION OF
CHAD S. PEHRSON IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO SEAL**

Case No.: 2:23-cv-00467

Judge: Ted Stewart
Magistrate Judge: Cecilia M. Romero

RYMARK, INC., a Utah corporation; and
NICHOLAS THAYNE MARKOSIAN, an
individual,

Third-Party Plaintiffs,

vs.

SHAEN BERNHARDT, an individual;
ASHLEY MIRON LESHEM, an individual;
DAVID HESTERMAN, an individual;
NICOLAI COLSHORN, an individual;
STEFAN KAMMERLANDER, an individual;
ALEXANDER COENEN, an individual;
MARTIN FASSER HEEG, an individual;
AMERIMARK GROUP AG, a Swiss
corporation; and PHILOMAXCAP AG, a
German corporation,

Third-Party Defendants.

I, Chad S. Pehrson, declare as follows:

1. I am over 18 years of age and am fully competent to make this declaration. I am counsel to Defendants and Counterclaimants Rymark, Inc. (“**Rymark**”); Nicholas Markosian; John Kirkland; and Vicky Small. I have personal knowledge of the matters set forth below or have obtained knowledge from my review of the file. I make this declaration in support of Defendants’ objections to Magistrate Judge Romero’s granting, *see* Dkt. 156, of the motion to seal filed by Plaintiffs Capana Swiss Advisors AG and AmeriMark Automotive AG ([Dkt. 110](#), the “**Motion**”).

2. On October 2, 2024, Magistrate Judge Romero held a hearing on a number of discovery motions. (*See* Dkt. 133 (setting the hearing).) A true and correct copy of the transcript of that hearing is attached hereto as **Exhibit A**.

3. On June 28, 2024, counsel for Rymark sent Plaintiffs a copy of a draft Amended Counterclaim and Third-Party Complaint and asked whether they would stipulate to its filing. A

copy of that draft, and the email transmitting it, was attached to Defendants’ opposition to the Motion and is located on the docket at [Dkt. 115-5](#). That draft contained citations to the documents Rymark intended to attach to the draft Amended Counterclaim and Third-Party Complaint. (See, e.g., [Dkt. 115-5](#) at p. 13 nn.4–5; see also [Dkt. 115-1](#) ¶ 12.) Plaintiffs would not stipulate to the filing of the Amended Counterclaim and Third-Party Complaint, so on July 13, 2024, Rymark filed a motion for leave to file its Amended Counterclaim and Third-Party Complaint, attaching the draft and the exhibits Rymark had told Plaintiffs it was going to file. (See [Dkt. 107](#).)

4. Two days later, on July 15, counsel for Plaintiffs emailed the Consents Clerk – without advance notice to Rymark – and requested that the Consents Clerk put eighteen of the exhibits to the draft Amended Counterclaim and Third-Party Complaint under “immediate temporary seal” so that Plaintiffs could file a motion to seal. Less than an hour later, over Rymark’s objection (and after an *ex parte* call between the Consents Clerk and Plaintiffs’ counsel)¹ the Consents Clerk said that “[p]er chambers,” the exhibits had been sealed. The relevant emails were attached to Defendants’ opposition to the Motion and can be found at Dkts. [115-12](#), [115-13](#), and [115-14](#), and [115-15](#).

Executed on October 17, 2024, in Salt Lake City, Utah.

By: /s/Chad S. Pehrson
Chad S. Pehrson

¹ Defendants do not mean to accuse Court staff of anything untoward. Plaintiffs knew what Defendants were going to file, waited for Defendants’ filing, and then unfairly put Court staff in an impossible situation with an emergency, off-docket request to seal documents filed by an opposing party. But how that request was handled appears to be highly irregular.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, I filed the foregoing via the Court's CM/ECF system, which provided notice of such filing to all counsel of records.

/s/Chad Pehrson
Chad Pehrson